

C.C.R.B CASE CLOSING FORM

Investigator assigned: Jeffrey P. Rios		Team: 4	CCRB#: 9804036	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourtesy <input type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Date of incident: 9/9/98	Time of incident: 1:00 AM	Location of incident: 115th Precinct Stationhouse	Pct. of occurrence: 115	Date S.O.L. Expires: 3/9/00
Date reported: 9/9/98	Time reported: 1:57 AM	To whom/where/how reported: Made by phone to IAB.		
Complainant: § 87(2)(b)		Home address: § 87(2)(b)		
Victim(s): § 87(2)(b)		Home address: See above.		
Witness(es): § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b)		Home address: § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b)		
Subject officer(s) (include rank): PO Sean Downes		Shield: 29467	Tax: 918975	Command: 115
Witness officer(s) (include rank): PAA Tami Best PO Patricia Tulloch PO Rafael Jimenez PO Timothy Erwig Lt. George Rafferty		Shield: N/A 25774 23521 29677 N/A	Tax: 327522 889379 899394 919006 881338	Command: 115 115 115 115 115
Allegation(s) by letter: A) Force: PO Sean Downes used physical force against § 87(2)(b)				Recommendation(s): § 87(2)(g)

Synopsis

On September 8, 1998, at approximately 11:30 PM, § 87(2)(b) and his friend, § 87(2)(b) were talking on the corner of 95th St. and 35th Ave. § 87(2)(b) pointed a red laser-light at PO Timothy Erwig who was on bike patrol and was therefore arrested for § 87(2)(b). § 87(2)(b) protested the arrest of § 87(2)(b) so he was arrested for § 87(2)(b) by PO Sean Downes, PO Erwig's partner. Both men were taken to the 115th Precinct stationhouse to be processed. At about 1:00AM the next day (9/9/98), PO Downes removed § 87(2)(b) from the holding cell to be fingerprinted. § 87(2)(b) pulled away from PO Downes at the print machine and PO Downes then threw him to the floor. § 87(2)(b) § 87(2)(g) suffered a laceration on his eyebrow and his cheekbone was fractured. § 87(2)(g)

Summary Of Complaint

On September 9, 1998, at approximately 11:30 PM, Mr. § 87(2)(b) and his friend § 87(2)(b) were on the corner of 95th St. and 35th Ave. in Queens. § 87(2)(b) pointed a red laserbeam light at an officer (now identified as PO Timothy Erwig) and was therefore arrested for § 87(2)(b). § 87(2)(b) told the officers to calm down because the officers were pushing § 87(2)(b) around. § 87(2)(b) was then arrested for § 87(2)(a) 160.50, § 87(2)(b). § 87(2)(b) by PO Sean Downes, PO Erwig's partner. § 87(2)(b) and § 87(2)(b) were taken to the 115th Precinct stationhouse for processing. After approximately 3 hours of being in the holding cell at the 115th Precinct stationhouse, PO Downes took § 87(2)(b) to be fingerprinted. PO Downes was holding § 87(2)(b) finger tightly, so § 87(2)(b) yanked away from him. PO Downes grabbed § 87(2)(b) arm and placed handcuffs on him. After he was handcuffed, PO Downes threw § 87(2)(b) to the floor. The left side of § 87(2)(b) face slammed into the floor. PO Downes then grabbed § 87(2)(b) head and slammed his left cheek into the floor about 4-5 times. § 87(2)(b) stated that there was blood all over his face and on the floor as a cut opened above his left eye, on his brow. § 87(2)(b) passed out on the floor. When he regained consciousness a few minutes later, PO Downes had his knee against his neck.

§ 87(2)(b) stated that he was not drinking alcohol that evening, but had smoked marijuana. § 87(2)(b) stated that there were other officers around in the stationhouse, but none assisted in hitting him. § 87(2)(b) was screaming from the holding cell to call an ambulance and screamed that they were going to kill him.

An ambulance arrived and transported § 87(2)(b) to § 87(2)(b). There, § 87(2)(b) was x-rayed, revealing that his left cheekbone had a minor fracture, while his right cheekbone had a major break. § 87(2)(b) said that the left side of his face was being banged into the floor, but the banging also caused his right cheekbone to fracture. § 87(2)(b) needed surgery and two metal plates were inserted in his face (see encl. 24a-g for photos). § 87(2)(b) also received stitches above his left eye (encl. 5a-b).

§ 87(2)(b) has filed a notice of claim against the City of New York (encl. 30). A 50-h hearing was conducted (encl. 31a-m). § 87(2)(a) Gen.Mun. §50-H(3)

That civil matter is still pending.

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Internal Affairs was notified of the incident (log #98-15234). Investigative officers went to § 87(2)(b) and interviewed § 87(2)(b) (encl. 2d). According to the IAB worksheet, § 87(2)(b) stated that PO Downes went to handcuff him and when he pulled his hands out, PO Downes pushed him. § 87(2)(b) also told them that when he was pushed to the floor, he started bleeding and his ankles were cuffed. § 87(2)(b) admitted to smoking drugs prior to his arrest. § 87(2)(g)

the tape the interview was recorded on was erased.

Results of Investigation

§ 87(2)(b) medical records were received (encl. 23a-ee). The records show that § 87(2)(b) did suffer rather serious injuries. Surgery was performed on him to repair fractures of the left and right zygomatic bones (cheekbones). Further explanation is given later under § 87(2)(b) testimony.

On 9/9/98, § 87(2)(b) was waiting on line to buy food from a food truck on 35th Ave. and 95th St. While he was on line, § 87(2)(b) a man he knows from the neighborhood, stopped to talk to § 87(2)(b). § 87(2)(b) had an object which emitted a red beam of light and § 87(2)(b) wanted to see it. As § 87(2)(b) looked at it, PO Downes and another officer rode up to them on their bicycles. The officers grabbed § 87(2)(b) turned him around and placed handcuffs on him. § 87(2)(b) was arrested for § 87(2)(b) with the red light. § 87(2)(b) said that § 87(2)(b) interfered by "getting smart" with the officers and was arrested for § 87(2)(a) 160.50. Both men were taken to the 115th Precinct stationhouse.

At the stationhouse, they were placed in separate holding cells. While § 87(2)(b) was in his holding cell, he saw PO Downes remove § 87(2)(b) to be fingerprinted. PO Downes put § 87(2)(b) hand on the fingerprint machine and § 87(2)(b) moved his hand from the machine. PO Downes then grabbed § 87(2)(b) by the shirt, "flipped" him around, and threw him down to the floor. As he fell to the floor, § 87(2)(b) face hit the side of a chair and then he fell to the floor onto his stomach. PO Downes grabbed § 87(2)(b) lifted him up and shook him, and then dropped him to the ground. § 87(2)(b) said that he saw blood right away. § 87(2)(b) did not see PO Downes bang § 87(2)(b) face into the ground. He only saw him lift him off of his stomach, look at him, and then drop him back to the ground two times.

§ 87(2)(b) said that § 87(2)(b) lost consciousness when he first hit the chair on the way down to the ground. § 87(2)(b) was not handcuffed when he was thrown to the ground. PO Downes never tried to put § 87(2)(b) hands behind his back to handcuff him before throwing him to the ground. § 87(2)(b) said that there were no other officers present when § 87(2)(b) was thrown to the ground. When PO Downes' partner came into the room, § 87(2)(b) was already on the ground. EMS came to the stationhouse and removed § 87(2)(b) to the hospital (encl. 6a-b).

IAB officers interviewed § 87(2)(b) approximately 3 hours after the incident occurred (encl. 2c). § 87(2)(b) told the officers that PO Downes took § 87(2)(b) from the holding cell to be fingerprinted. Some sort of argument started between PO Downes and § 87(2)(b) about why § 87(2)(b) was being arrested. § 87(2)(b) moved his arm away, and PO Downes grabbed him and fell on top of him. According to the IAB worksheet, this interview was electronically recorded. However, the tape was apparently erased. The statement given by § 87(2)(b) is based simply on the investigating officer's worksheet.

§ 87(2)(b), an Emergency Medical Technician for the New York City Fire Department, responded to the 115th Precinct stationhouse on September 9, 1998, at approximately 1:30 AM. He responded to a call of an injured prisoner. When he arrived, he observed the male prisoner in an altered mental status, meaning that he was not fully alert. He was borderline unconscious. The prisoner was laying on the floor, face-up, and had moderate bleeding over his left eye. The injury was incurred secondary to a fall, as noted on the Ambulance Call Report (encl. 23e-f). EMT § 87(2)(b) does not recall if the prisoner was in the holding cell or if he was in handcuffs. EMT § 87(2)(b) § 87(2)(b) does not recall if a police officer informed him as to how the prisoner sustained his injury. He said that his main concern is patient care. The officers may have told him what happened, but he does not recall. The prisoner was taken to § 87(2)(b). EMT § 87(2)(b) stated that his partner that day is no longer with the Fire Department's Emergency Medical Service (encl. 12a-b).

§ 87(2)(b) of § 87(2)(b) recalled that § 87(2)(b) was brought in by EMTs, and they were accompanied by police officers. § 87(2)(b) complained that he was pushed to the ground by police officers and sustained injuries. § 87(2)(b) stated that § 87(2)(b) had an abrasion over his left eyebrow and the left side of his face was bruised. § 87(2)(b) does not recall the right side of his face being injured. § 87(2)(b) recalled that he saw the x-rays and the CT scan of § 87(2)(b) face. The reports stated that there was a fracture of the left cheekbone, but § 87(2)(b) does not recall what the severity of the fracture was. He said that if he saw the x-rays, he could tell the severity of the fracture (whether or not it was displaced). § 87(2)(b) could not speculate as to how the injury may have occurred. He just stated that it took some blunt mechanism to cause this type of injury. § 87(2)(b) said that if § 87(2)(b) sustained only one blow when he hit the floor, and both right and left zygoma were fractured, then his nose would likely have been broken as well.

§ 87(2)(b) said that the CT scan shows that only the left zygoma was fractured. He said that the CT scan is the most accurate tool. He further said that it is possible the right zygoma was an old injury because there did not seem to be injuries to the right side of his face. § 87(2)(b) said that repeated blows would cause injuries to more areas of the face. § 87(2)(b) injury was distinctly to the cheekbone and left eye area. According to § 87(2)(b) § 87(2)(b) did not appear to be intoxicated when he was in the emergency room (encl. 9a-b).

§ 87(2)(b), a radiologist at § 87(2)(b) did not actually treat the complainant, § 87(2)(b) § 87(2)(b) only interpreted the CT scan of the facial bones. He did this on § 87(2)(b). The scan showed that there was a fracture to the left cheekbone of § 87(2)(b). A part of § 87(2)(b) right cheekbone was also fractured. § 87(2)(b)

§ 87(2)(b) could not speculate as to how the injury may have occurred. The fracture was serious enough to require surgical repairs. § 87(2)(b) stated that it is possible one may be rendered unconscious if they were to fall and fracture their cheekbone (encl. 7).

After viewing a photograph, § 87(2)(b) recalled that she treated the complainant, § 87(2)(b) § 87(2)(b) of the Oral, Maxilla, Facial Unit saw § 87(2)(b) on § 87(2)(b). She recalled that § 87(2)(b) was treated for zygoma (cheekbone) fractures. She believes that one side was a new fracture while the other was an older fracture. § 87(2)(b) was involved in the surgery on § 87(2)(b). Metallic plates were inserted in § 87(2)(b) face. § 87(2)(b) and § 87(2)(b) also performed the surgery.

§ 87(2)(b) does not know the amount of force needed to fracture the cheekbone. She cannot speculate as to how this injury occurred. § 87(2)(b) said that when § 87(2)(b) first came in, he had swelling on the left side and his left eye was red. There were no signs of injuries on his right side. § 87(2)(b) does not recall if § 87(2)(b) alleged that the police caused the injury (encl. 8a-b).

§ 87(2)(b), an oral surgeon at § 87(2)(b) recalled performing surgery on § 87(2)(b). § 87(2)(b) recalled that he was notified that a patient had facial lacerations and swelling around his left peri-orbital area. The patient complained that he was the victim of an altercation. When § 87(2)(b) saw the patient, § 87(2)(b) he was in handcuffs and in police custody. § 87(2)(b) does not recall if § 87(2)(b) gave him specifics as to how the injury occurred. § 87(2)(b) had bruises and swelling around his left eye and cheek. His lower eyelid was shut. § 87(2)(b) needed stitches on his left eyebrow. X-rays were taken and they revealed that § 87(2)(b) suffered a fracture of the left zygomatic arch. In layman's terms, the lateral-brow bone (surrounding his left eye) was fractured. In addition, the side of the cheek and the junction between the cheekbone and upper jaw were fractured. They were separate fractures; it was not one continuous fracture extending from the brow all the way down to the cheekbone. § 87(2)(b) said that this is a regular pattern of fracture. This was a severe/displaced fracture according to § 87(2)(b). It took a substantial amount of force for these injuries to occur. § 87(2)(b) said that it is very difficult to determine whether or not the injury occurred from one single blow. He said, "it can occur from a single blow if it's sufficient strength and direction...or it can occur from multiple blows....There is no way to say how it occurred."

§ 87(2)(b) also had a fracture of the right zygomatic arch. However, this was definitely an old injury. The right-side fracture did not come as a result of the incident on September 9, 1998. Since they were already correcting the left-side fracture, § 87(2)(b) offered to correct the right side to make his facial bones look even. § 87(2)(b) agreed. § 87(2)(b) said that § 87(2)(b) told him that he (§ 87(2)(b)) was hit some time ago, but did not give specifics. After the surgery, § 87(2)(b) saw § 87(2)(b) for follow-up visits. § 87(2)(b) does not recall if § 87(2)(b) ever made any allegations of excessive force against the police (encl. 10a-b).

On September 9, 1998, PO Sean Downes was working with PO Erwig on bike patrol. While on patrol, PO Downes observed a group on the corner of 95th St. and 35th Ave. and asked them to disperse. Most of the group did disperse, but two of them remained. Those men have now been identified as § 87(2)(b) and § 87(2)(b). § 87(2)(b) § 87(2)(b) pointed a red laser-light at PO Erwig, so PO Erwig placed him under arrest for § 87(2)(b). § 87(2)(b) § 87(2)(b) objected and got in the way of the arrest, so PO Downes placed him under arrest for § 87(2)(a) 160.50 (encl. 25-26).

§ 87(2)(b) and § 87(2)(b) were taken to the 115th Precinct stationhouse and placed in the holding cells. While in the cell, § 87(2)(b) started to act disorderly by banging on the cell and yelling at people who passed by. PO Downes believes that he was intoxicated. § 87(2)(b) had to be restrained inside of the cell and was cuffed to the cell. § 87(2)(b) found a plastic bottle inside of the cell and urinated inside of it. He shook the bottle and threatened to throw it at PO Downes. PO Downes was able to coax § 87(2)(b) into dropping the bottle after approximately 15 minutes. When he did put the bottle down, PO Downes removed him from the holding cell.

PO Downes took § 87(2)(b) to the fingerprint area. He was not handcuffed. At the print machine, PO Downes took § 87(2)(b) hand, but § 87(2)(b) pulled away immediately. Once he pulled away, § 87(2)(b) took a swing at PO Downes. PO Downes moved and was not hit by § 87(2)(b). PO Downes grabbed § 87(2)(b) by

the waist and took him to the ground "to take control of his arms." PO Downes grabbed § 87(2)(b)'s arms and placed them in handcuffs. § 87(2)(b) did not resist once he was on the floor. PO Downes stated that PO Erwig came over and gave him handcuffs.

PO Downes said that from the fall, § 87(2)(b) sustained a cut above his eye and lost consciousness. At first he was conscious, but as they waited for the ambulance to arrive, he lost consciousness. § 87(2)(b) was uncuffed and left on the floor. He was not taken back into the cell. PO Downes said that he never continuously banged § 87(2)(b) face into the floor, nor did he pick him up and drop him back to the floor. PO Downes does not know how the injury was sustained. He said that he never saw his head strike anything. PO Downes does not know if § 87(2)(b) head hit any object on the way down to the floor. PO Downes told PO Erwig to call for an ambulance, and PO Erwig did so. EMS responded and § 87(2)(b) was removed to the hospital (encl. 14a-b).

On September 9, 1998, PO Timothy Erwig was working bike patrol with PO Downes. While on patrol, they observed a large group of people playing a radio on a corner. PO Erwig and PO Downes asked the individuals to turn the radio down. The group started to leave when an individual, now identified as § 87(2)(b) shined a red laser light on PO Erwig. § 87(2)(b) was arrested for § 87(2)(b) (encl. 27).

PO Erwig said that § 87(2)(b) was screaming and grabbing onto his arm. PO Erwig does not know what § 87(2)(b) was saying because he couldn't understand him; § 87(2)(b) was not speaking English. § 87(2)(b) was trying to prevent the arrest. PO Erwig does not remember what § 87(2)(b) was charged with. PO Downes arrested § 87(2)(b), § 87(2)(b) and § 87(2)(b). They were taken to the 115th Precinct stationhouse. At the stationhouse, both § 87(2)(b) and § 87(2)(b) were screaming and yelling. Both were placed in the holding cell immediately. § 87(2)(b) was yelling in Spanish. § 87(2)(b) was jumping up and down on a bench in the back of the holding cell. § 87(2)(b) was handcuffed to the cage because POs Erwig and PO Downes were afraid that he would break the bench.

§ 87(2)(b) urinated in a bottle and was shaking it as if he were going to throw it. After § 87(2)(b) calmed down a little, PO Downes went to the cell to fingerprint § 87(2)(b). PO Erwig was 7 to 10 feet away from the area where § 87(2)(b) was being fingerprinted. § 87(2)(b) was shaking his arm around and wriggling as PO Downes was trying to fingerprint him. § 87(2)(b) took his free hand and swung at PO Downes, but did not connect. PO Downes twisted § 87(2)(b) arm and executed a "take down." PO Erwig could not describe this "take down." § 87(2)(b) was taken down face first, causing a laceration above his eye. § 87(2)(b) was bleeding and appeared to be unconscious. PO Erwig called for an ambulance over the radio.

PO Erwig said that PO Downes did not bang § 87(2)(b) face into the floor after he hit the ground. PO Erwig stated that PO Downes did not pick § 87(2)(b) off the floor and drop him back down again. § 87(2)(b) was not intoxicated. He just seemed to be angry and yelling (encl. 20a-b).

On September 9, 1998, Lt. George Rafferty was assigned as the desk officer at the 115th Precinct stationhouse. Lt. Rafferty said he believes that two prisoners were in the holding cell before he went on duty. He stated that the prisoners, now identified as § 87(2)(b) and § 87(2)(b) were acting irrationally. Lt. Rafferty said that § 87(2)(b) was giving the officer a hard time at the fingerprinting machine. Lt. Rafferty did not observe what happened; he was told later that § 87(2)(b) refused to be fingerprinted. When he arrived to the cell area, he saw § 87(2)(b) on the floor. Lt. Rafferty said that the fingerprinting area is to his right and a little behind him. PO Erwig told Lt. Rafferty that an ambulance was being called.

Lt. Rafferty said the prisoner was not wearing handcuffs when he saw him but PO Downes was holding him down. Lt. Rafferty said the prisoner was not moving but was still conscious. He does not recall PO Downes' exact position only that PO Downes was over the prisoner holding him down. The only officers around were Lt. Rafferty, PO Erwig and PO Downes. Lt. Rafferty did not see PO Downes pick up the prisoner and drop him back down again. PO Downes told Lt. Rafferty that the prisoner was fidgeting and he needed to be put to the floor (encl. 22a-b).

Lt. Rafferty waited for EMS and notified the duty captain and IAB.

On September 9, 1998, PO Rafael Jimenez was assigned to stationhouse security, which included being in and out of the stationhouse. PO Jimenez does not have an entry in his memobook regarding the incident, but he does have an entry about his transporting § 87(2)(b) to the hospital. In his memobook, PO Jimenez has recorded 0140 post change; one prisoner to § 87(2)(b). PO Jimenez said that he does not remember this incident.

PO Jimenez does not recall PO Downes having trouble fingerprinting an individual. PO Jimenez does not recall the injuries that the prisoner he transported had suffered. PO Jimenez does not remember accompanying an unconscious prisoner to the hospital. PO Jimenez said that it is not often that he accompanies a prisoner to the hospital, but he still does not recall this incident. PO Jimenez was showed a picture of § 87(2)(b) but stated that he does not remember seeing him (encl. 18a-b).

On September 9, 1998, PO Patricia Tulloch was assigned to the drawing up of affidavits. PO Tulloch does not have any entries in her memobook regarding this incident. PO Tulloch said that she does not recall this incident. PO Tulloch does not remember PO Downes having a problem with a prisoner in the stationhouse. PO Tulloch does not recall PO Downes having a problem fingerprinting a prisoner. PO Tulloch does not remember a prisoner being injured secondary to a fall.

PO Tulloch's room is the second room behind the desk. PO Tulloch said that she can not see the fingerprinting area from her room. PO Tulloch does not recall a prisoner being injured that evening. PO Tulloch was shown a picture of the complainant, but does not remember seeing him (encl. 16a-b).

On September 9, 1998, PAA Best was assigned to the 124 room. On Tuesdays and Wednesdays, PAA Best works by herself. Her steady partner is PAA Murray, but she would not be in the stationhouse on Wednesdays. PAA Best is not required to keep a memobook. PAA Best knows PO Downes but does not recall PO Downes struggling with a prisoner in September or ever. PAA Best does not recall an incident in which an individual was injured in the stationhouse in September.

PAA Best could not say how often EMS responds to the stationhouse. PAA Best was showed pictures of the complainant, but PAA Best does not remember seeing him.

The 124 room is located to the right after entering the stationhouse. PAA Best cannot see where people are being fingerprinted from her office (encl. 11a-b).

It should be noted that although IAB was notified of this incident, they did not conduct an investigation. They did do a callout (encl. 2b-d) and interviewed the victim and witness, but they did not interview the subject officer. IAB simply referred the case to CCRB without conducting a full investigation.

Conclusion and Recommendations

A) Force: PO Sean Downes used physical force against § 87(2)(b) (PG 104-01).

§ 87(2)(g) He said that he was handcuffed while he was on his feet, and then thrown to the ground. § 87(2)(b) testimony refutes that. § 87(2)(b) said that he did not see PO Downes handcuff § 87(2)(b). He only saw PO Downes throw him to the floor. PO Downes then lifted him up, looked at him, and dropped him back to the floor. Also, § 87(2)(b) said that PO Downes repeatedly banged his face into the floor. § 87(2)(b) said that this did not occur. Additionally, § 87(2)(b) said that his right cheekbone was fractured as a result of the force used by PO Downes. However, § 87(2)(b) said that that fracture was from an old injury. § 87(2)(b) even said that § 87(2)(b) told him that he was hit some time ago, injuring the right cheekbone. Even if § 87(2)(b) did not tell him that the fracture was from an old incident, § 87(2)(b) said that he could tell that it was an old fracture simply by examining it. It is possible, however, that § 87(2)(b) believed that the right fracture was a new one and that the old injury was aggravated by the incident with PO Downes.

§ 87(2)(g)

[§ 87(2)] recalled that [§ 87(2)(b)] was simply "flipped" by PO Downes onto the floor. On the way down, he banged into a chair. PO Downes then lifted him from behind and dropped him to the ground. [§ 87(2)(a)]

§ 87(2)(g)

§ 87(2)(g)

[§ 87(2)(b)] is a small thin man. He stands at 5'9" and 130 pounds, while PO Downes is a much larger 5'11", 240 pounds. [§ 87(2)(g)]

[§ 87(2)(b)] According to PO Downes, [§ 87(2)(b)] took a swing at him, but missed. PO Downes was then able to grab a hold of his waist, and he then brought him to the ground. By taking him to the ground, PO Downes exceeded that level of force which was necessary. [§ 87(2)(g)]

[§ 87(2)(b)] PO Erwig said that he was 7-10 feet away from PO Downes and [§ 87(2)(b)] when the incident occurred. [§ 87(2)(g)]

§ 87(2)(g)

Investigator:

Date:

11/8/99

Supervisor:

Date:

11/5/99

Reviewed by:

Date:

11/8/99

Reviewed by:

Date: